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IN THE HIGH COURT OF KARNATAKA AT BANGALORE

Dated this the 26th day of May, 1998

BEFORE

THE HON'BLE MR.JUSTICE V.P.MOHAN KUMAR

WRIT PETITION No.33849 OF 1997

BETWEEN:

Mr.M.V.Krishna Murthy,
S/o Late R.Varadarajan,
major, R/o No.227, I Floor,
53rd Cross, VI Main, IV Block,
Rajajinagar, Bangalore-560 010 ...PETITIONER

(Sri.L.M.Pandurangaswamy, Advocate,
for the petitioner)

A N D:

1. Sri.S.V.Hadimani,
Circle Inspector of Police,
Rajajinagar Police Station,
Bangalore.
2. Smt.Shakuntalamma,
W/o Late R.Varadarajan, major,
R/o No.227, I Floor, 53rd Cross,
VI Main, IV Block, Rajajinagar,
Bangalore-560 010
3. Smt.R.Prabhavathi,
W/o R.Kumar, major,
R/o No.615, 75 'A' Cross,
VI Block, Rajajinagar,
Bangalore.
4. Circle Inspector of Police,
Rajajinagar Police Station,
Bangalore.

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5. Shivaram,
Advocate, Ground Floor,
53rd Cross, 5th Main,
4th Block, Rajajinagar,
Bangalore-10

... RESPONDENTS

(M/s.M.T.Nanaiah & Associates for
respondents Nos.2 and 3)

(Sri.N.K.Ramesh, HCGA, for respon-
dent No.4)

(Sri.M.R.Rajagopal, Adv.for respon-
dent No.5)

(R-1 - Ack.not received)

Writ Petition filed under Articles 226 & 227
of the Constitution of India, praying to (a) issue
a writ in the nature of mandamus directing the
Circle Inspector of Police, Rajajinagar Police
Station, Bangalore - the 1st respondent herein to
deliver the house-hold articles enumerated in the
Schedule annexured to this petition; and (b) to
review the order passed by this Hon'ble Court in
W.P.No.2645/97 dated 26-9-1997, etc.

This Writ Petition having been heard and
reserved for orders and coming on this day for
pronouncement of orders, the Court pronounced the
following:


O _ R _ D _ E _ R

A domestic dispute involving the mother and
children, which should have been settled amicably,
reached first the portals of the Court, then travel-
led through to the lock up in the Police Station
and Sub-Jail and has now reached this Court.

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2. The petitioner is the son of the 2nd respondent and the brother of the 3rd respondent. He resides, according to him, along with his wife and three children, the eldest being 20 years, in the building at No.227, I Floor, 53rd Cross, VI Main, IV Block, Rajajinagar, Bangalore. Admittedly, the 2nd respondent also resides in the same premises along with her mentally retarded child. The 3rd respondent is a married daughter and has taken up residence along with the 2nd respondent, which, according to the 3rd respondent, is intended "to lend moral support" to her.

3. The petitioner alleges that on 31-8-1997, the petitioner, his wife and two of his sons were summoned to the Police Station by the 4th respondent by deputing two plain clothes Police men at about 10 A.M. The third child, a minor daughter was left behind in the house. It was represented to them that there was complaint filed by the 2nd respondent against them (who along with the 3rd respondent and two other strangers were present in the Police Station) alleging the commission of offence of trespass, intimidation, attempt to commit murder by pouring kerosene oil, poisoning the drinking water etc.etc. The petitioner alleged that they were detained in the Police Station till 4-30 P.M



whereafter, they were produced before the Magistrate, who, in the absence of sureties to release them on bail, remanded them to judicial custody and sent to sub-jail. They were produced before the Court at 1 P.M on 1-9-1997, whereafter they were released on bail. They allege that they were out of Police custody by 5-30 P.M.

4. The petitioner alleges that after they were brought to the Police Station on 31-8-1997, the petitioner was not informed of the arrest. The petitioner came to know of the arrest from the residence of the Magistrate alone whereupon, with leave, he contacted his daughter and asked her to contact the Lawyer Sri.S.V.Naik and intimate him the development.

5. When the petitioner came back, the petitioner was confronted with a strange situation. It was informed by his daughter that after the 2nd respondent came back, she was forced out of the house where she was staying. Thereafter, in the presence of the ^{1st} ~~4th~~ respondent and two other Police Constables, the house-hold articles of the petitioner were thrown out. The daughter who was driven out was given shelter by the 5th respondent. It is further alleged that at about 11 P.M that night, the ~~4th~~ ^{1st} respondent brought a middle aged woman in an

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autorickshaw, who was carrying a bedding and few house-hold articles and he put her in possession of the premises occupied by the petitioner. Thereafter, on his instruction, the 3rd respondent closed the passage leading to the first floor.

6. The petitioner pleads the following background to the case. The property belonged to the father of the petitioner Sri. Varadarajan. On his death, on 22-5-1995, it devolved on his wife and children. The petitioner claims that he discharged the debt incurred by the father on account of the construction of the building where they are residing and alleges further that he renovated the building. He alleges that the 3rd respondent used to visit the house frequently with an eye to siphon the property and she caused rift between the mother and son. She claimed partition of the property, but the petitioner declined the request. This led the 2nd respondent lodging a complaint against the petitioner with the Police. The petitioner also lodged a counter complaint. Later the 2nd respondent filed O.S.No.9074/96, a suit for partition of the residential building. The petitioner also filed O.S.No.4745/97 against respondents Nos.2 and 3 for permanent injunction. Interim orders have been

made

made in both the suits. The culmination of these disputes, according to the petitioner, is the last complaint and the arrest of the petitioner and the members of the family. When the petitioner came back, he discovered that the 2nd respondent had got control of the premises occupied by him and several of the movables were lying strewn outside. They were stacked in front of the ground floor occupied by the 5th respondent, which led the 5th respondent ^{to} file W.P.No.26451/97 for a direction to the authority, namely, the 4th respondent, to remove these unclaimed articles. On 26-9-1997, this Court ordered removal of the articles in Annexure-D1 Judgment. The petitioner alleges that this order was obtained behind his back, and he was not made a party to the said proceedings. The articles listed in Annexure-G were in his premises, occupied by him and the 4th respondent is liable to make good the same. The petitioner has filed the Writ Petition seeking the following reliefs:

- (a) issue a writ in the nature of mandamus directing the Circle Inspector of Police, Rajajinagar Police Station, Bangalore the 1st Respondent herein to deliver the house hold articles enumerated in the Schedule Annexed to this Petition.

(b) to

(b) to review the order passed by this Hon'ble Court in W.P.No.2645/97 dated 26-9-1997.

(c) issue such other writ or order or direction as this Hon'ble Court deems fit to grant under the circumstances of this case including the order as to costs in the interest of justice and equity.

7. Except the 4th respondent, who was to make available the records, filed a statement of objections answering the factual details and detailing the incident that transpired. None of the other respondents have chosen to deny the allegations made by the petitioner by filing a statement of objections. The incumbent of the Office of the 4th respondent the 1st respondent, against whom certain mala fide conduct has been attributed, has not even chosen to deny the averments. On respondents 2 and 3, emergent notice was ordered on 2-12-1997, and the petitioner was permitted to serve notice by hand delivery. These respondents, it is alleged, at first refused to receive notice. Later, process was paid for service of notice on these respondents. On 11-12-1997, Mr.M.T.Nanaiah, learned counsel entered appearance on behalf of
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the 2nd and 3rd respondents. Though they entered appearance, they did not file statement of objections in rebuttal of the allegations made in the Writ Petition. The Writ Petition was heard on 10-12-1997, 12-12-1997, 15-12-1997, 16-12-1997 and on 18-12-1997.

8. In the statement of objections filed by the 4th respondent, it is briefly stated that the complaint filed by the 2nd respondent was received at 11-30 A.M on 31-8-1997, that the said complaint was recorded in the General Diary. The case is Crime No.345/97 of Rajajinagar Police Station, involving the commission of offence punishable under Sections 448, 506(2) I.P.C read with Sec.125 of the Criminal Procedure Code, was registered. It is alleged that the petitioner, his wife and his children, who were summoned, came at 13-30 hours, that they were produced before the jurisdictional Magistrate at 3-45 P.M, that as there were no sureties to release them on bail, and therefore, they were remanded to Police custody. Again, it is averred that a telephone call was received from one Mr.S.V.Naik on 31-8-1997 at 5-45 P.M informing that some persons have broken open the lock put to the house bearing Door No.27, 6th Main, 53rd Cross, Rajajinagar, where the petitioner was residing

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and the caller requested the 4th respondent to go over there and enquire. Thereupon the 4th respondent went there and discovered that certain house-hold articles were lying in the passage. He then directed the 2nd respondent not to keep the articles in the passage, whereupon the 2nd respondent kept the same inside the house. At about 5-45 P.M, a telephonic call was also received from the Office of the Commissioner of Police from P.S.I (Crime), Rajajinagar Police Station, enquiring about the call made by Sri.S.V.Naik and he informed the Commissioner of Police about the arrest of the petitioner on the complaint of the 2nd respondent. It is alleged that later at about 8-30 P.M, Sri.S.V Naik, Advocate, lodged a complaint that the 2nd respondent has trespassed into the premises of the petitioner. This was registered as Crime No.436/97. It was further submitted that the complaint of the 2nd respondent was registered as Crime No.345/97 was investigated by the P.S.I (L & O) and after due investigation, charge-sheet has been prepared. Likewise, Crime No.346/97 filed by Sri.S.V.Naik was also under investigation. But, on 2-9-1997, the 4th respondent states that, notice was issued to all concerned informing that the interim order passed in the suit filed by the petitioner ^{here} in O.S.No.4245/97 should be abided by all concerned.

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It is also averred that the petitioner has filed O.S.No.7285/97 seeking injunction relief against the 4th respondent and Commissioner of Police and had moved I.A.No.II therein for interim relief. On 30-9-1997, the Civil Court has ordered maintaining of status quo, making it however clear that the order will not prevent taking action for breach of peace. Therefore the present Writ Petition made, making reckless allegation is out of place. The 4th respondent submits that he has complied with the order dated 26-9-1997 in W.P.No.26451/97 under a Mahazar which the respondent will make available and they are now in Police custody and the same has been duly ordered by the VII Addl.Chief Metropolitan Magistrate, Bangalore. The 4th respondent alleges that the articles alleged in Annexure-G schedule were never taken possession of. The allegations made in this behalf are intended to prejudice this Court. The allegations made against the 4th respondent were all denied. He alleges that the 4th respondent is unnecessarily drawn in because of the pending litigation between the petitioner and the 2nd respondent. The respondent seeks the dismissal of the Writ Petition.

9. I have heard Mr.Pandurangaswamy, learned counsel for the petitioner, and Mr.N.K.Ramesh, learned

Government

Government Advocate appearing on behalf of the 4th respondent. I did not have the benefit of the arguments of the other counsel.

10. I had directed the learned Government Advocate Mr.Ramesh to make available to this Court the General Diary maintained by the Rajajinagar Police Station for the relevant period and he had been exceptionally helpful to this Court and had assisted the Court displaying a greater amount of responsibility and fairness.

11. To begin with, I will advert to the plaint in O.S.No.9074/96. That is, admittedly a suit filed by the 2nd respondent against the petitioner for partition and separate possession of her share. The petitioner is shown as residing at:

"No.227, 53rd Cross,
4th Block, Rajajinagar."

The plaint makes the following averments regarding the possession of the petitioner.

" 6. That during the life time of the husband of the plaintiff, the husband of the plaintiff allowed the son Sri.M.V Krishnamurthy to reside in the ground floor and the plaintiff is residing in the upstairs portion along with her mentally retarded son Sri.M.V.Chandra-shekar."

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The 2nd respondent proceeds as if, as on the date of the suit, the petitioner is occupying the ground floor and is attempting to induct stranger who is the 5th respondent herein and that appropriate interim orders may also be granted. In this behalf, the following averments in the plaint may also be adverted to:

"That the plaintiff submits if the defendant is allowed to lease or mortgage the property without having any right and without giving the shares of the plaintiff and other family members it will not only affect the right of the plaintiff but also other family members. If he is allowed to do so. The plaintiff and other family members will be put to greater hardship, mental agony and further which cannot be compensated any manner."

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That the plaintiff submits that the order of permanent injunction is necessary restraining the defendant from the creating third party interest, under the circumstances stated above."

This suit was filed on 23-12-1996. On 27-12-96, an ex parte temporary injunction was also granted against the petitioner restraining him from alienating the property. In the statement of objections filed by the petitioner in the I.A., for temporary
injunction,

injunction on 11-2-1997, we find the following averments:

"This defendant submits that the plaintiff is in occupation of a larger portion of the first floor, comprising of a hall, two rooms and kitchen whereas this defendant along with his wife and three College going children are residing in a room in the first floor and enjoying the common toilet."

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"This defendant submits that while the ground floor house is in the occupation of one Sri.H.C.Shivaramu and his family, the outcome of the ground floor which has been converted to a godown and an adjoining room are in occupation of other tenants. The rents from the godown and the room are being realised and appropriated by the plaintiff...."

It is seen that the interim order passed on 26-12-1996 was modified as on 11-2-1997 calling upon the parties to maintain the status quo. The next averment to be referred in this behalf is the complaint filed by the 2nd respondent before the Sub-Inspector of Police, Rajajinagar, alleging trespass of the portion of upstairs by the petitioner on 10-2-1997 and occupying the same. This complaint

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is made as early as on 13-2-1997. It stated thus:

"..My son family members now trespassed into my house yesterday evening and occupied the 1st room of the 1st floor premises and they are now giving all sorts of trouble and further threatening me and my son with dire consequences to kill and at any time they may do like this..."

Again an I.A. is seen filed in ^{the said suit} O.S.No.9074/96 under Order 39 Rule 2A of the G.P.C before the Civil Court to take action against the petitioner for violation of the interim order. It is averred therein as under:

"That, the defendant herein served with the notice and entered appearance so far they are have not filed any objections, now at the instance of one Sri.Shivaramu, Advocate, they have trespassed into the first floor and occupied 1st room and they are giving all sorts of trouble to me and also to my daughter Prabhavathi who is now staying with me for giving moral support."

This I.A.was filed only on 11-3-1997. Now, it is thus stated that the petitioner was in occupation of a Room in the upstairs along with the 2nd respondent and that the 5th respondent is in occupation of the ground floor. This state of affairs

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is brought about, according to the 2nd respondent, by trespass. Thereafter, alleging that the Police authorities are not taking any action on her complaint, the 2nd respondent filed a private complaint before the VII Addl.Chief Metropolitan Magistrate at Bangalore as P.C.R.No.133/97 complaining the incidents set-forth above and referred to in the complaint made to the Police on 13-2-1997 and alleged commission of offence punishable under Sections 448, 307, 506B and 34 of I.P.C. The complaint was ordered to be investigated into by the Police. The Police registered the same as Crime No.90/97 and investigated. In that investigation, the 5th respondent gave a statement and produced the copy of the mortgage deed executed by him to the petitioner. The same is dated 12-12-1996, and is long prior to the institution of the partition suit itself. There was also a complaint made by the wife of the petitioner on 20-2-1997 against the husband of the 3rd respondent regarding certain incident and though it is acknowledged as having received by the Police, no action is seen taken thereon. Therein also she alleges as residing along-with the 2nd respondent in the upstairs portion. The private complaint filed by the 2nd respondent was also referred, on the Police filing a 'B' report to the effect that the subject-matter is purely a

civil



civil dispute pending in O.S.No.9074/96. This was intimated to the 2nd respondent by communication dated 18-3-1997. The 2nd respondent accepted the report and took no steps to challenge the same. It is to be noted that the complaint specifically alleged trespass by the petitioner and commission of an offence punishable under Section 448 of I.P.C.

12. Thus, as on 18-3-1997, the position was the petitioner was in occupation of a portion of the premises in the upstairs portion of the building in question along with the 2nd respondent. The ground-floor was mortgaged to the 5th respondent under a document dated 12-12-1996, long before the institution of the partition suit by the 2nd respondent and obtaining any interim order. The questions whether the petitioner gained entry by trespass etc., are now to be adjudicated and within the purview of investigation by the Civil Court, and, therefore, this Court should not touch upon that issue, lest it would prejudice the parties.

13. The petitioner has produced the electricity bills dated 3-2-1997, 3-3-1997, 3-7-1997, 3-8-1997, the interview card received by his son at the address shown as at No.227, 53rd Cross, 4th Block, Rajajinagar, Ration Card, etc., to show that he is residing in the premises as claimed by him.

14. Now,

14. Now, prima facie, it is shown that the petitioner is in occupation of the premises in 227, I Floor, 53rd Cross Road, 4th Block, Rajajinagar. It is also conceded that he is a co-owner of the property along with the 2nd respondent. Admittedly, the 3rd respondent is not staying there permanently, and even according to the 2nd respondent, she resides there along with her.

"to lend moral support"
(vide pleadings in the civil proceedings)

15. There is one other development to be noticed before proceeding. The petitioner, apparently not to be outbeaten by his mother, the 2nd respondent, has also filed O.S.No.4245/97 on 3-6-1997 against respondents Nos.2 and 3 seeking permanent injunction restraining alienation of the property. Therein he states as under:

"The plaintiff along with his wife and three college going children is residing in a portion of the first floor comprising a room and common toilet. The first defendant along with the plaintiff's brother M.V.Chandrasekhar who is mentally disabled are also living in the first floor, though the said area under their occupation comprises a hall, two rooms and kitchen. The ground floor
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in the occupation of one H.C. Shivaramu and his family, whereas a room on the ground floor and an shop premises are under occupation of tenants."

Thus, the possession of a portion of the upstairs portion of the building is with the petitioner and his family.

16. The next stage of the dispute after a lull from 18-3-1997 starts with 31-8-1997 on which date the 4th respondent claims that a complaint was lodged against the petitioner by the 2nd respondent. That was a dispute regarding the house with reference to which the petitioner and his family members were summoned to the Police Station. The brief contents of the F.I.R. reads thus :

'ಈ ಕೇಸಿನ ಸಂಕ್ಷಿಪ್ತ ಸಾರಾಂಶವೇನೆಂದರೆ ದಿನಾಂಕ 31-8-97ರ ಹಿಂದೆ ರಾಜಾಜಿನಗರ, 4ನೇ ಬ್ಲಾಕ್, 53ನೇ ಕ್ರಾಸ್ ಮನೆ-ನಂ.227ರಲ್ಲಿ ಪಿರಾಡುದುಡಾರರ ಮನೆಗೆ ಮೇಲ್ಕಂಡ ಆರೋಪಿತರು ಅತಿಕ್ರಮ ಪ್ರವೇಶ ಮಾಡಿ, ಅಸಿಯ ವಿಚಾರದಲ್ಲಿ ವಿನಾ:ಕಾರಣ ಜಗಳ ತೆಗೆದು, ನ್ಯಾಯಾಲಯದ ಆಜ್ಞೆಯನ್ನು ಉಲ್ಲಂಘಿಸಿ ಹಾಗೂ ಪಿರಾಡುದುಡಾರರ ಮಗನಾದ ಆರೋಪಿ :1 ಕೃಷ್ಣಮೂರ್ತಿ ಯವರು ಸರ್ಕಾರಿ ನೌಕರನಾಗಿದ್ದು, ಪಿರಾಡುದುಡಾರರನ್ನು ಸಂರಕ್ಷಣೆ ಮಾಡುವ ಜವಾಬ್ದಾರಿ ಇದ್ದರೂ ಸಹಾ: ಬೇಜವಾಬ್ದಾರಿಯಿಂದ ಅವಾಚ್ಛಕ್ತ ಪದಗಳಿಂದ ಬೆದರು ನೀಮೆವಣೆ ಹಾಕಿ, ವಿಷ ಹಾಕಿ ಸಾಯಿಸುವುದಾಗಿ ಪ್ರಾಣ ಬೆದರಿಕೆ ಹಾಕಿರುವುದಾಗಿ ದೂರು ಇತ್ಯಾದಿ."

The allegation made by the 2nd respondent in the complaint in this behalf states thus:

‘ನಾನು ಶ್ರೀಮತಿ ಶಕುಂತಲ, ನಂಬರ್ 227, 53ನೇ ಕ್ರಾಸ್, 4ನೇ ಬ್ಲಾಕ್, ರಾಜಾಜಿನಗರ, ಬೆಂಗಳೂರು-560 010, ಈ ವಿಳಾಸದಲ್ಲಿ ವಾಸವಾಗಿದ್ದು ವಿಧವೆಯಾಗಿ ಕಷ್ಟ ಕಾರ್ಷಣ್ಯವಾಗಿ ಜೀವನವನ್ನು ನಡೆಸುತ್ತಿದ್ದೇನೆ. ನಾನು ಬುದ್ಧಿಮಾಂದ್ಯ ಮಗ ನೊಂದಿಗೆ ವಾಸ ಮಾಡುತ್ತಿದ್ದೇನೆ. ನನ್ನ ಯಜಮಾನರು ಮೃತರಾದ ನಂತರ ನಾನು ನನ್ನ ಮಗನ ಕಿರುಕುಳವನ್ನು ತಾಳಲಾರದೇ, ಮಾನ್ಯ ನ್ಯಾಯಾಲಯಕ್ಕೆ ನನ್ನ ಇನ್ನೊಬ್ಬ ಮಗನ ವಿರುದ್ಧ ನ್ಯಾಯಾಲಯದಲ್ಲಿ ತಡೆಯಾಜ್ಞೆಯನ್ನು ತಂದಿದ್ದು ಅದರೂ ಸಹ ನನ್ನ ಮಗ ಕೃಷ್ಣಮೂರ್ತಿ ಎರಡು ವರ್ಷದಿಂದ ಇಲ್ಲನಲ್ಲದ ಕಿರುಕುಳವನ್ನು ಕೊಟ್ಟು ತಾನು ವಾಸಿಸುತ್ತಿದ್ದ ಕೆಳ ಅಂತಸ್ತಿನ ಮನೆಯನ್ನು ಭೋಗ್ಯಕ್ಕೆ ಹಾಕಿ ನಾನು ಮತ್ತು ನನ್ನ ಮಗನು ವಾಸ ಮಾಡುವ ಮೇಲಂತಸ್ತಿನಲ್ಲಿ ಮಾನ್ಯ ನ್ಯಾಯಾಲಯದ ಆದೇಶವನ್ನು ಉಲ್ಲಂಘಿಸಿ ನಮ್ಮನೂ ಸಹ ಮೇಲಂತಸ್ತಿನಿಂದ ಹೊರಗೆ ಹಾಕುವ ಪ್ರಯತ್ನವನ್ನು ಮಾಡುತ್ತಿದ್ದಾನೆ, ಹಾಗೂ ಅವರ ಹೆಂಡತಿ, ಮಗನು ನನ್ನನ್ನು ಸೀಮೆವೆಣ್ಣೆ ಹಾಕಿ ಬಿರಿ ಹಚ್ಚುತ್ತೇನೆ, ವಿಷದ ಗುಳಿಗೆ ಹಾಕಿ (ನೀರಿನಲ್ಲಿ) ಸಾಯಿಸುತ್ತೇನೆ ಎಂದು ಬೆದರಿಕೆ ಹಾಕುತ್ತಾರೆ. ..

The complaint read as a whole only discloses a threat to commit the offences and not accomplished offences. In this case as the petitioner is already in possession, there is no question of any trespass. The allegation further is that there is an attempt to violate the Court order. The order in reality is restraining alienation, and a violation thereof is not the concern of the Police at that moment. Then, as regards possession, it is to maintain the status

status quo. The status quo was that the petitioner was already in possession of the upstairs. After perusing the complaint, a crime was registered as offences punishable under Sections 188, 448 and 506(2) I.P.C.

17. The petitioner and his family were summoned to the Police Station and they came at 13-30 hours as per records. It looks very strange that after questioning the petitioner from 13-30 hours onwards, the 4th respondent could not find out the relevant facts. It is still strange that the petitioner might not have produced any documents to vindicate his position and that he would have simply held back these details so that the 4th respondent could proceed and arrest him. I am also at a loss to understand how the 4th respondent could arrest the petitioner and the entire family (excluding the minor daughter), [✓] When earlier in February, 1997, with respect to similar dispute, the complaint of the 2nd respondent was referred to as a civil dispute.

18. The allegation in the complaint of 31-8-1997 shows an attempt by the petitioner and the members of his family to commit the offences by trespassing and to murder the 2nd respondent. The question of arrest of the offenders therein would arise only

after

after the investigation under Section 157 of the Criminal Procedure Code, reveals materials to do so. The material averment in the statement of objections filed by the 4th respondent states as follows:

"..The said complaint was recorded in the General Diary of the Rajajinagar Police Station on the very day and the same is registered in Crime No.345/97 under Section 188, 448, 506(2) IPC read with Section 125 of the Criminal Procedure Code. Thereupon, the Sub-Inspector of Police summoned the persons mentioned in the complaint to the Police Station so as to enquire into the complaint. The petitioner, his wife and sons came to the Police Station at 13-30 hours. Thereafter the said persons were arrested and were produced before the jurisdictional Magistrate at 3-45 p.m".

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"It is pertinent to note that on the very day, i.e., 31-8-97 at about 5-35 p.m, one Mr.S.V.Nayak, Advocate telephoned to this respondent and informed him that some persons have broken open the lock put on house bearing Door No.27, 6th Main, 53rd Cross, Rajajinagar and asked this respondent to go over to the scene and also informed that he will also come to the spot. The said fact has also been entered in the General Diary.

On

On receiving the said telephone call, this respondent along with Police Sub-Inspector (Law & Order) of Rajajinagar Police Station went to the spot and found that certain house hold articles were lying on the passage. Hence, he informed the second respondent not to keep any articles on the passage/Road and to put the same inside the house. Thereupon, the second respondent kept the articles inside the house and hence, this returned to the Police Station.."

Where is the material to show as to whether any investigation or enquiry was conducted by the Police Officer before the petitioner and the members of his family were arrested ? The need for a detailed enquiry arises because earlier a similar complaint was thrown out as arising out of a civil dispute and it is known to the Police authorities that the said dispute is still pending before the Court. The following averment in the statement of objections discloses the scant regard shown by the 4th respondent and other subordinate Officers in dealing with the personal liberties of individuals:

"It is respectfully submitted that Crime No.345/97 was registered on the complaint of Smt.Shakunthamma. Thereupon, the P.S.I.(L & O) investigated into the
complaint

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complaint and has recorded the statements of the complainant, her daughter Smt.Prabhavathi and the neighbours."

When the issue of arbitrary arrest is complained of before the Court, it is the duty of the Police Officer to lay before the Court the complete details of the action taken by him on the complaint and the details of the investigation. He cannot make casual sweeping statements that the accused were arrested after recording the statements of the witnesses. If that has to be accepted, it will come to a stage where, if a complainant files a complaint and produces half a dozen witnesses to aver the details of the complaint like a tutored parrot, ~~and then~~ ^{then} the Police Officer can straight-away arrest the named accused. Recognition of such a right with the Police Officer would be ringing the death bell to personal liberty. The 4th respondent should have entertained a reasonable suspicion of the petitioner and his family having committed the offence. The Officer arresting the person accused of the offences must be satisfied that the accusation levelled against him is well founded. Did the Police Officer visit the site and investigate ? Did he question the immediate neighbours ? Nothing of these kind is forthcoming.

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In this case, it is clear from the facts stated ^{above} that it was not possible to say that the accusation levelled against the petitioner and the entire members of his family justified the arrest and detention of the petitioner and his family.

19. Mere reasonable suspicion is not sufficient ground to arrest a person. It is not sufficient that the Police Officer has a ^{hunch} that the allegation in the complaint may be true. Besides that, something more is required before the personal liberty of a person is deprived. That is the reason why Section 157 of the Cr.P.C commands to 'investigate' before an arrest is effected. Investigation has been defined under Section 2(h) as follows:

"Investigation" includes all the proceedings under this Code for the collection of evidence conducted by a police officer or by any person (other than a Magistrate) who is authorised by a Magistrate in this behalf;"

As stated by the Supreme Court in STATE OF WEST BENGAL v. SWAPAN KUMAR GUHA (1982(1) SCC 561:

"The position which emerges from these decisions and the other decisions which are discussed by brother A.N.Sen is that the condition precedent to the commencement of investigation under Section 157

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of the Code is that the F.I.R. must disclose, prima facie, that a cognizable offence has been committed. It is wrong to suppose that the police have an unfettered discretion to commence investigation under Section 157 of the Code. Their right of enquiry is conditioned by the existence of reason to suspect the commission of a cognizable offence and they cannot, reasonably, have reason so to suspect unless the F.I.R., prima facie, discloses the commission of such offence. If that condition is satisfied, the investigation must go on and the rule in *Khwaja Nazir Ahmad* (1944) 71 IA 203: AIR 1945 SC 18: 217 IC 1) will apply. The Court has then no power to stop the investigation, for to do so would be to trench upon the lawful power of the police to investigate into cognizable offences. On the other hand, if the F.I.R. does not disclose the commission of a cognizable offence, the court would be justified in quashing the investigation on the basis of the information as laid or received."

Thus, a Police Officer cannot start investigation the moment the complaint reaches his table. And an arrest can follow only thereafter and is to be only after collecting all evidence regarding the allegation made by the complainant. Here we may profitably refer to the following passage from *STATE OF HARYANA v. BHAJAN LAL* (AIR 1992 SC 604).

Therein

Therein their Lordships stated thus:

"41. We shall now examine as to what are the requirements to be satisfied by an Officer in charge of a police station before he enters into the realm of investigation of a cognizable offence after the stage of registration of the offence under Section 154(1). We have already found that the police have under Section 154(1) of the Code a statutory duty to register a cognizable offence and thereafter under Section 156(1) a statutory right to investigate any cognizable case without requiring sanction of a Magistrate. However, the said statutory right to investigate a cognizable offence is subject to the fulfilment of a prerequisite condition, contemplated in Section 157(1). The condition is that the officer in charge of a police station before proceeding to investigate the facts and circumstances of the case should have "reason to suspect" the commission of an offence which he is empowered under Section 156 to investigate. Section 135 of the Code of Criminal Procedure of 1861 (Act XXV of 1861) required the police officer on receipt of a complaint or information constituting any of the offences specified in column 3 of the schedule annexured to that Act should proceed with the investigation, but this Code did not require the condition of entertaining the reason to suspect the commission of an offence before commencing the investigation. Subsequently, in the Code of Criminal Procedure of 1872

a provision, namely, Section 114 which was more or less similar to the present Section 157(1) was introduced which provision required the police officer to have reason to suspect the commission of a cognizable offence before he proceeded to investigate the facts and circumstances of the case. Thereafter in the Code of Criminal Procedure of 1882 a provision, namely, Section 157 except for some variations in the latter part of that Section was introduced which provision also required the police officer to have "reason to suspect" the commission of a cognizable offence. May it be noted that the Law Commission of India in its 41st report expressed its opinion that Section 157 did not call for any amendment.

42. The expression "reason to suspect" as occurring in Section 157(1) is not qualified as in Section 41(a) and (g) of the Code, wherein the expression, "reasonable suspicion" is used. Therefore, it has become imperative to find out the meaning of the words "reason to suspect" which words are apparently clear, plain and unambiguous. Considering the context and the object of the procedural provision in question, we are of the view that only the plain meaning rule is to be adopted so as to avoid any hardship or absurdity resulting therefrom and the words are used and also to be under-

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understood only in common parlance. We may, in this behalf, refer to a decision of the Privy Council in *Pakala Narayanaswami v. Emperor* AIR 1939 PC 47 at pages 51-52 wherein Lord Atkin said as follows:

"When the meaning of the words is plain, it is not the duty of Courts to busy themselves with supposed intentions..... It, therefore, appears inadmissible to consider the advantages or disadvantages of applying the plain meaning whether in the interests of the prosecution or accused."

43. The word 'suspect' is laxically defined in Webster's Third International Dictionary as follows:

Suspect - to look up at, suspect; the act of suspecting or the condition of being suspected... to have doubts of; be dubious or suspicions about; (2) to imagine (one) to be guilty or culpable on slight evidence or without proof.... (3) to imagine to be or be true, likely or probable; have a suspicion, intimation or inkling of.

44. In *Corpus Juris Secundum* (Vol.83) at page 923 the meaning of the word 'suspect' is given thus:

"The term 'suspect' which is not technical, is defined as meaning to imagine exist; have some, although insufficient, grounds for inferring; also to have a vague notion of the existence of, without adequate proof; mistrust; surmise. It has been distinguished from "believe".

45. In the same volume, the expression "suspicion" is defined at page 927 as follows:

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"The act of suspecting or the state of being suspected; the imagination, generally of something ill; the imagination of the existence of something without proof, or upon very slight evidence, or upon no evidence at all..."

46. In words and phrases (permanent Edition 40A) at page 590, the word 'suspicion' is defined thus:

"Suspicion" implies a belief or opinion as to guilt based on facts or circumstances which do not amount to proof. *Scaffide v. State*, 254 NW 651. The state of mind which in a reasonable man would lead to inquiry is called mere 'suspicion'. *Stuart v. Farmers' Bank of Cuba City*, 117 NW 820.

47. Again at page 591 the said word is expounded as follows:

"The word 'suspicion' is defined as being the imagination of the existence of something without proof, or upon very slight evidence, or upon no evidence at all. *Cook v. Singer Sewing Mach. Co.*, 32 P 2d 430, 431, 138 Cal App 418."


In the background of this case, which details are available in the records of the 4th respondent himself, I am of the view that the Officer who arrested the petitioner, did not conduct any investigation and has merely played into the hands of the 2nd respondent for reason best known to himself. It looks as though, that the 4th respondent was anxious to "reasonably suspect" the petitioner and his family regarding the commission of the offences. This is being attempted to conform to the old adage that

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"the end justifies the means." In this behalf, in RAMPAL PITHWA RAHIDAS v. STATE OF MAHARASHTRA (1994 SCC (Cri) 851), the Supreme Court stated thus:

"37. "The quality of a nation's civilisation," it is said, "can be largely measured by the methods it uses in the enforcement of criminal law" and going by the manner in which the investigating agency acted in this case causes concern to us. In every civilised society the policy force is invested with the powers of investigation of the crime to secure punishment for the criminal and it is in the interest of the society that the investigating agency must act honestly and fairly and not to resort to fabricating false evidence or creating false clues only with a view to secure conviction because such acts shake the confidence of the common man not only in the investigating agency but in the ultimate analysis in the system of dispensation of criminal justice. Let no guilty man go unpunished but let the end not justify the means! The Courts must remain ever alive to this truism. Proper results must be obtained by recourse to proper means otherwise it would be an invitation to anarchy."



These principles are not conformed to by the Police Officer as well. As held by the Supreme Court in AIR 1995 SC 2140, failure to collect evidence on the complaint made at the investigation allegedly held leads to an inference that the investigation is perfunctory and tainted. In such an event, it is reasonable to hold that the arrest as such was clearly illegal and unwarranted.

20. At this stage, I am constrained to remark about the manner in which the Magistrate ordered the remand of the accused. The order reads as hereunder:

"31-8-1997. A1 Krishnamurthy, A2 Asha-latha, A-3 Rajesh & A-4 Rakesh produced in my residence on 31-8-1997 at 4-25 P.M. P.C.7474, 6697 & P.C.3165 of R.Nagar P.S. accused no compt against the police. u/s 188, 448, 506(2) r/w 125 Cr.P.C. Accused A1 to A4 J.C till 1/9/97 or, F.I.R. enclosed herewith."

The Magistrate did not apply at all his mind while passing the order. An Officer may seek remand of the accused only if the Officer believes that there are grounds for believing that the accusation or information is well founded. The Magistrate should also satisfy himself in that behalf, ^{and but} regretably in this case, he did not apply his mind

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at all in this behalf. As held by the Supreme Court in KHATRI (II) v. STATE OF BIHAR (1981(1) SCC 627), ^{that} a Magistrate cannot mechanically sign the remand order. He should enquire into the matter. The Supreme Court ^{as well.} reiterated the above view in the subsequent decisions. Regretably there is not even an apology for compliance of this requirement.

21. There is yet another serious irregularity committed by the Police Officials in this matter. Proviso to Section 160 of the Criminal Procedure Code reads as follows:

"Provided that no male person under the age of fifteen years or woman shall be required to attend at any place other than the place in which such male person or woman resides."

In this case, the second person described as the accused is a woman. She was admittedly directed to come to the Police Station and she reached there at 13-30 hours, i.e., at 1-30 P.M. Admittedly she was produced before the Magistrate only at 4-25 P.M. This is a flagrant violation of the statutory prohibition. The Supreme Court has observed that such deviation by Police Officers should be viewed in a serious manner and has in NANDINI SATPATHY v. P.L. DANI (AIR 1978 SC 1025) stated thus:

"Before

"Before discussing the core issues, we wish to note our regret, in this case, at a higher level police officer, ignorantly insisting on a woman appearing at the police station, in flagrant contravention of the wholesome proviso to Section 160(1) of the Cr.P.C. Such deviance must be visited with prompt punishment since policemen may not be a law unto themselves expecting others to obey the law."

This conduct of the 4th respondent and his subordinates are totally illegal and arbitrary.

22. Now this takes us to the last leg of the issue now involved. We have seen that even by the allegation of the 2nd respondent himself, the petitioner was in occupation of a portion of the first floor along with the 2nd respondent. The specific allegation is that after the family was taken into custody, their premises was broken open and the personal belongings were removed. In this behalf, the 4th respondent admits receiving first a telephone call and then a complaint at 8.35 P.M from Mr.S.V.Naik, the Advocate for the petitioner, which is registered as PCR 346/97. That complaint refers to the telephonic communication of the incident by Sri.Naik.

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This fact is admitted in the statement of objections and it is stated hereunder in that behalf:

"...It is pertinent to note that on the very day i.e. 31-8-97 at about 5-35 p.m., one Mr. S.V. Nayak, Advocate telephoned to this respondent and informed him that some persons have broken open the lock put on house bearing Door No. 27, 6th Main, 53rd Cross, Rajajinagar and asked this respondent to go over to the scene and also informed that he will also come to the spot. The said fact has also been entered in the General Diary. On receiving the said telephone call, this respondent along with Police Sub-Inspector (Law & Order) of Rajajinagar Police Station went to the spot and found that certain house hold articles were lying on the passage. Hence, he informed the second respondent not to keep any articles on the passage/Road and to put the same inside the house. Thereupon, the second respondent kept the articles inside the house and hence, this returned to the Police Station."

This statement suggests that all the moveables were removed by the 2nd respondent. But, this Court had on 26-9-1997 in W.P.No. 26451/97 directed as hereunder:

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"I have heard Mr.N.K.Ramesh, learned Government Advocate appearing for the respondents. Certain unclaimed movable articles are kept in the premises let out to the petitioner. The petitioner says that they do not belong to him. If so, the proper thing to do by the 2nd respondent would be to take the articles into their custody and deal with the same as unclaimed articles, either by auctioning the same or dealing with the same in accordance with law. When once the owner of the premises complains to the Police Authorities that there are certain unclaimed articles kept in his premises and that they do not belong to him, it is the duty of the Police authorities to take custody of those articles and deal with the same in accordance with law."

In the statement of objections filed herein, the very same 4th respondent who was directed as above by this Court, states as hereunder:

"...Pursuant to the order passed by this Hon'ble Court on 26-9-97, this Respondent has taken possession of the articles lying in front of the house of the petitioner therein (Respondent No.5 in this writ petition) under a mahazar and the said articles are now in the police custody which has been duly ordered by the learned VII Addl. Chief Metropolitan Magistrate, Bangalore. Except these articles which have been taken possession

possession by this Respondent, no other articles are with this Respondent."

This clearly means that both the averments cannot be correct. The complaint lodged by Mr.Naik as seen from the General Diary entry states that the door of the petitioner's house has been broken open and that the moveables were removed. When the 4th respondent received the complaint from Sri.S.V.Naik, that the moveables belonging to the petitioner had been removed from the house and were strewn outside and in pursuance to that complaint, the 4th respondent visited the spot, did he, as a law enforcing Officer, investigate about the telephonic message, the condition of the premises occupied by the petitioner and to whom the moveables kept there belonged to, before asking the 2nd respondent to remove them? Admittedly, he did not do so. If the 4th respondent had gone to the premises on the basis of the telephonic complaint of Sri.S.V.Naik, it was his imperative duty to enquire about the complaint. He cannot lord over the place and distribute the moveables found in the premises to various persons as he has admittedly done, without satisfying himself about its ownership. He cannot forget that, if the moveables belonged to the 2nd respondent, it would not have been lying all around; and the petitioner and his family who were occupying the premises,

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were in his custody. The reasonable inference is that the 4th respondent is not disclosing the truth.

23. Now, from the contradiction made mention of above, it is clear that the 4th respondent did not initiate any action on the complaint lodged by Sri.S.V.Naik regarding the trespass of the petitioner's house and ransacking the same. When on the complaint made by the 2nd respondent, the 4th respondent and his subordinates took action immediately and arrested the accused and charge-sheeted ^{them} it is strange that the 4th respondent could not do anything about the complaint made on behalf of the petitioner till the date of filing of the statement of objections. Admittedly, the whole family of the petitioner was in the custody at the relevant time. There is a gross dereliction of duty ^{on the part} of the incumbent of the office of the 4th respondent who is the 1st respondent herein, when he declined to afford protection to the property of the accused ^{in his custody}. If then, a conclusion is drawn, that the 1st respondent was privy to the goings on in the house of the petitioner, certainly it may not be out of place. A very serious note has to be taken by the competent authorities on this conduct of the 1st respondent.

24. Now,

24. Now, the averments of the contesting parties show that the petitioner was in possession of the upstairs portion of the disputed building. The complaint received from Sri.S.V.Naik and recorded shows that his house was broken open and ransacked. The statement of objections filed by the 4th respondent also supports these averments and show that various moveables were strewn around in the passage and Court-yard of the house. This has obviously resulted due to the motivated indifference of the 1st respondent.

25. May be, the case of the 2nd respondent that the petitioner gained entry into the portion occupied by him due to trespass is a matter that requires investigation. This matter is before the Civil Court for adjudication. At that stage, the 4th respondent cannot decide the issue by passive abetment of trespass by the 2nd respondent. He is not endowed with any power to decide civil disputes. When once he takes the accused into his custody, the authority detaining the accused is duty bound to protect the life and property of the accused. Merely because an accused is interned, he does not lose his right to live or lose his other incorporeal rights. If there is a threat to the same, the

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law enforcing agency is duty bound to protect the same and it cannot by its inaction, make the accused to lose his property rights. Such a conduct on the part of the law enforcing agency can be described only as deliberate and interested. In such an event, it would be a serious lapse, to be taken note of by the superiors in the Department, to be dealt with in accordance with law.

26. Now, there is a specific allegation by the petitioner that in his residence the 1st respondent has planted a middle aged lady. This averment is not specifically denied by the 1st respondent. (He has not even chosen to enter appearance despite notice). If this is true, then obviously the 1st respondent has misused his departmental position to achieve this. As such, it is the duty of the Department to restore possession of the house of the petitioner to the position ante as it existed on 31-8-1997. If this allegation of the petitioner is not correct, then also, in the light of the trading of charges between the petitioner and respondents Nos.2 and 3, it is the duty of the 4th respondent to see that the petitioner is restored to the position he enjoyed as regards the possession of the premises as on 31-8-1997.

27. While this Court is exercising its extraordinary jurisdiction under Article 226 of the Constitution, it is clothed with sufficient power to do

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complete justice to the parties. When it is brought to its notice, the glaring and high-handed action of a Police Officer, whereby persons, who have been only arraigned as accused, are made to lose their property, this Court cannot watch the goings on mutely and helplessly. The long arms of justice should assuage their sufferings as far as possible and restore to them whatever property right that they were enjoying prior to their detention.

28. The misery that the petitioner and his family suffer today is due to the 2nd and 3rd respondents who induced the 1st respondent to misconduct himself. These respondents should, therefore, be called upon to pay cost so that it may to some extent assuage the indignities suffered by the petitioner. Each of the respondents 2 and 3 shall pay cost of the petitioner at the rate of Rs.5000/-. As regards the 1st respondent is concerned, he had a greater responsibility to uphold the law and not to act in aid of the 2nd respondent. For this lapse, he should pay Rs.7500/- as cost to the petitioner.

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29. In the nature of the allegations exchanged by the petitioner and the 2nd respondent, and in view of the past conduct, this was indeed a case wherein the petitioner and the members of his family could have been released on self bond under Section 436/437 of the Cr.P.Code. The complaint itself does not disclose that a case for arrest and detention of the accused exist. When the father, mother and two of her brothers were sent to the Jail, the 4th respondent had not bothered to ascertain as to who would have taken care of the minor daughter whom he had left behind in the house. The intervention of the 'good samaritan' the 5th respondent, had saved yet another tragedy.

30. While moulding the reliefs to be granted, we may again keep in mind the words of the Supreme Court made in STATE OF HARYANA v. BHAJAN LAL (AIR 1992 SC 604) wherein their Lordships stated:

"62. The sum and substance of the above deliberation results to a conclusion that the investigation of an offence is the field exclusively reserved for the police officers whose powers in that field are unfettered so long as the power to investigate into the cognizable offences is legitimately exercised in strict compliance with the provisions falling under Chapter XII of the Code and

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But if a police officer transgresses the circumscribed limits and improperly and illegally exercises his investigatory powers in breach of any statutory provision causing serious prejudice to the personal liberty and also property of a citizen, then the Court on being approached by the person aggrieved for the redress of any grievance has to consider the nature and extent of the breach and pass appropriate orders as may be called for without leaving the citizens to the mercy of police echelons since human dignity is a dear value of our Constitution. Needs no emphasis that no one can demand absolute immunity even if he is wrong and claim unquestionable right and unlimited powers exercisable upto unfathomable cosmos. Any recognition of such power will be tantamount to recognition of "Divine Power" which no authority on earth can enjoy."

This demonstrates a case where the party should not be left again to the whims of the 'Divine' power of the Police. This Court should step in and pass appropriate orders granting the relief.

31. As it is seen that the petitioner was in possession of the premises in 227, First Floor, 53rd Cross, VI Main, IV Block, Rajajinagar, Bangalore, the 4th respondent will give full police protection to the
petitioner

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petitioner and his family to re-enter the said premises and re-occupy the same and the 4th respondent shall remove all obstructions causing in doing so. The petitioner is free to take appropriate legal measures to recover the moveables or its value he has allegedly lost from his place of residence on or after 31-8-1997 from such other persons who are responsible for the loss including the 1st respondent by instituting such proceedings including civil suit. The petitioner and his family are also entitled to recover damages from the 1st respondent for the alleged illegal arrest by instituting appropriate civil proceedings. But, I make it clear that the finding entered by this Court in this Writ Petition as regards the validity of the arrest is tentative in nature for the limited purpose of this case and is not conclusive.

32. A copy of the judgment will be forwarded to the Director General of Police, Karnataka, to make suitable enquiries into the allegations made against the conduct of the 1st respondent. The Writ Petition is disposed of as above.

Sd/-
JUDGE

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